

# Buying Lots from Developers

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## **CAVEAT EMPTOR**

"Caveat Emptor," warned the early Romans in the market place. . . "let the buyer beware!" This is good advice. The Department of Housing and Urban Development's Interstate Land Sales Division seeks full disclosure of facts consumers need to make prudent decisions when they buy land through interstate land sales. But it's up to the consumer to determine whether or not the property is a good buy.

This publication is for public information purposes only and does not constitute a complete set of guidelines from HUD.

## **BUYING LOTS FROM DEVELOPERS**

Prudent buyers seek facts before they spend money. It is especially necessary to be well informed when shopping for land for a recreation/vacation or retirement retreat. The sale of land by interstate real estate operators is now a multibillion dollar business. There are honest, reliable developers and happy, satisfied lot purchasers. The reverse, unfortunately, is also true.

To offer protection for the consumer against fraudulent sales operations, Congress passed the Interstate Land Sales Full Disclosure Act in 1968. This Act is administered by the U.S. Department of Housing and Urban Development (HUD). It is really a "full disclosure" law which requires sellers to register their developments with the Federal Government and to disclose to prospective buyers pertinent facts about the land offered for sale. HUD does not approve or pass on the merits or value of the development. It does seek to protect the consumer by assuring access to all the information needed for a sensible, unhurried land purchase. Whether or not prospective buyers use that information is solely their decision.

## *BE WELL INFORMED WHEN SHOPPING FOR LAND.*

Lots may be marketed as sites for future retirement homes, for second home locations, or for recreational or campsite use. However, be wary of any investment aspect that may be stressed by sales personnel.

If you plan to purchase a lot which is offered by promotional land sales, take plenty of time before coming to a decision. Before signing a purchase agreement, a contract, or a check:

- Know Your Rights as a Buyer.
- Know Something about the Developer.
- Know the Facts about the Development and the Lot You Plan to Buy.
- Know What You Are Doing When You Encounter High-Pressure Sales Campaigns.

Here's how to make use of the protection the law provides for consumers.

## KNOW YOUR RIGHTS

Generally, if the company from which you plan to buy is offering 100 or more unimproved lots for sale or lease through the mails or by means of interstate commerce, it may be required to register with the U.S. Department of Housing and Urban Development (HUD). This means that the company must file with HUD and provide prospective buyers with a property report containing detailed information about the property. Failure to do this may be a violation of the law, punishable by up to five years in prison, a \$10,000 fine, or both.

The information filed by the developer and retained by HUD, must contain such items as these:

- A copy of the corporate charter and financial statement;
- Information about the land, including title policy or attorney's title opinion; copies of deed and mortgages;
- Information on local ordinances, health regulations, etc.;
- Information about facilities available in the area, such as schools, hospitals, and transportation systems;
- Information **about availability of utilities and water and plans for sewage disposal;**
- Development plans for the property, including information on roads, streets, and recreational facilities; and
- Supporting documents, such as maps, plats, and letters from suppliers of water and sewer facilities.

The company filing this information must swear that it is correct and complete, and an appropriate fee must accompany submission.

The information is retained by HUD and is available for public inspection. Copies are available for 10 cents a page.

The **property report**, which is also prepared by the developer, goes to the buyer. The law requires the seller to give the report to a prospective lot purchaser prior to the time a purchase agreement is signed. Ask for it. The seller is also required to have you sign a receipt acknowledging that you received the **property report**. *Do not sign the receipt unless you have actually received the property report.* If you cannot obtain a copy of the **property report**, HUD will provide one for a \$2.50 fee. When requesting a document, write HUD, Interstate Land Sales Division, 451 Seventh St., S.W., Washington, D.C. 20410, including the name of the developer and the name and location of the subdivision.

*Check the developer's property  
report before buying.*

This is the kind of information you will find in a **property report**:

- Distances to nearby communities over paved or unpaved roads;
- Existence of mortgages or liens on the property;

- Whether contract payments are placed in escrow, a special fund set aside to insure that all payments are applied to the purchase of the property;
- Availability and location of recreational facilities;
- Availability of sewer and water service or septic tanks and wells;
- Present and proposed utility services and charges;
- The number of homes currently occupied;
- Soil and foundation conditions which could cause problems in construction or in using septic tanks; and
- The type of title the buyer may receive and when it should be received.

# READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING

This report is prepared and issued by the developer of this subdivision. **It is NOT prepared or issued by the Federal Government.**

Federal law requires that you receive this report prior to signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh day following the signing of the contract or agreement.

If you did not receive this report before you signed a contract or agreement, you may cancel the contract or agreement any time within two years from the date of signing.

Name of Subdivision: \_\_\_\_\_

Name of Developer: \_\_\_\_\_

Date of This Report: \_\_\_\_\_

Note: This is a sample cover page of a **property report**. The "date of this report" refers to the one most recently provided to HUD by the developer.

**Remember:** HUD **does not** inspect the lot, prepare the **property report** or verify the statements in it. HUD **does** require the developer to register specific information regarding the development and to set forth this information in a **property report** and deliver the report to a prospective buyer.

## YOUR CONTRACT RIGHTS

If the lot you are buying is subject to the jurisdiction of the Interstate Land Sales Full Disclosure Act, the contract or purchase agreement must inform you of certain rights given to buyers by that Act. The contract should state that the buyer has a "cooling-off" period of 7 days (or longer if allowed by State law) following the day that the contract is signed to cancel the contract, for any reason, by notice to the seller, and get his or her money back.

Furthermore, unless the contract states that the seller will give the buyer a warranty deed, within 180 days after the contract is signed, the buyer has a right to cancel the contract for up to 2 years from the day that the contract is signed unless the contract contains the following provisions:

- A clear description of the lot so that the buyer may record the contract with the proper county authority;
- The right of the buyer to a notice of any default (by the buyer) and at least 20 days after receipt of that notice to cure or remedy the default; and
- A limitation on the amount of money the seller may keep as liquidated damages, of 15% of the principal paid by the buyer (exclusive of interest) or the seller's actual damages, whichever is greater.

## CONTRACT RIGHTS CONCERNING PROPERTY REPORTS

It has always been the law that if the developer has an obligation to register with the Interstate Land Sales Division, the developer or sales agent must give the buyer a copy of the current **property report** before the buyer signs a contract. Otherwise, the buyer has up to 2 years to cancel the contract and get his or her money back. That fact must also be clearly set forth in all contracts.

*You may have the right to void the contract if the subdivision has not been registered with HUD or you were not given a property report.*

Furthermore, if the developer has represented that it will provide or complete roads, water, sewer, gas, electricity, or recreational facilities in its **property report**, in its advertising, or in its sales promotions, the

developer must obligate itself to do so in the contract, clearly and conditionally (except for acts of God or impossibility of performance).

In addition to the right to a full disclosure of information about the lot, the *prospective buyer may have the right to void the contract and receive a refund of his or her money if the developer has failed to register the subdivision with HUD or has failed to supply the purchaser with a **property report***. While a purchaser may have the right to void the contract with the developer under these conditions, the purchaser may still be liable for contract payments to a third party if that contract has been assigned to a financing institution or some similar entity.

*The registration is retained by HUD and is available for public inspection.*

If the **property report** contains misstatements of fact, if there are omissions, if fraudulent sales practices are used, or if other provisions of the law have been violated, the purchaser may also sue to recover damages and actual costs and expenses in court against the developer. However, depending on when your sale occurred, you may be barred from taking further action due to the Act's statute of limitations. Your attorney can advise you further on this matter.

### **"COOLING-OFF" PERIOD**

Even if you received the **property report** prior to the time of your signing of the contract or agreement, you have the right to revoke the contract or agreement by notice to the seller until midnight of the seventh day following the signing of the contract. You should contact the developer, preferably in writing, if you wish to revoke your contract and receive a refund of any monies paid to date.

*Even if the property report is delivered to you before you sign a sales agreement ... the law gives you a "cooling off" period. This right cannot be waived.*

### **A WORD ABOUT THE INTERSTATE LAND SALES DIVISION**

The HUD unit which administers the law, examines the developer's registration statement, and registers the land sales operator is the Interstate Land Sales Division. Except for disclosure purposes, this office is not concerned with zoning or land use planning and has no control over the quality of the subdivision. It does not dictate what land can be sold, to whom, or at what price. It cannot act as a purchaser's attorney. But it will help purchasers secure the rights given to them by the Interstate Land Sales Full Disclosure Act.

HUD is authorized by law to conduct investigations and public hearings, to subpoena witnesses and secure evidence, and to seek court injunctions to prevent violations of the law. If necessary, HUD may seek criminal indictments.

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## **EXEMPTIONS FROM THE LAW**

The prospective buyer should be aware that **not all promotional land sales operations are covered by the law**. If the land sales program is exempt, no registration is required by HUD and there will be no **property report**. Here are some of the specific situations for which the statute allows exemptions without review by HUD:

Sale of:

- Tracts of fewer than 100 lots which are not otherwise exempt;
- Lots in a subdivision where **every lot is 20 acres or more in size**;
- Lots upon which a residential, commercial, or industrial building has been erected or where a sales contract obligates the **seller** to build one within two years;
- Certain lots which are sold only to residents of the State or metropolitan area in which the subdivision is located;
- Certain low volume sales operations (no more than 12 lots a year);
- Certain lots that meet certain local codes and standards and are zoned for single family residences or are limited to single family residences by enforceable codes and restrictions; and
- Certain lots, contained in multiple sites of fewer than 100 lots each, offered pursuant to a common promotional plan.

Other exemptions are available which are not listed above. If you have reason to believe that your sale is not exempt and may still be covered by the law, contact the Interstate Land Sales Division.

## **KNOW THE DEVELOPER**

Knowing your rights under the law is the first step in making a sensible land purchase. To exercise those rights you also must know something about the honesty and reliability of the developer who offers the subdivision that interest you. Don't fail to ask questions. Whether you are contacted by a sales agent on the telephone or by mail, at a promotional luncheon or dinner, in a sales booth at a shopping center, or in the course of your own inspection of the subdivision, make it your business to find out all you can about the company and the property. In addition, get any oral promises or representations in writing.

*Don't fail to ask questions.*



If you are seriously interested in buying a lot, ask if the company is registered with HUD or is entitled to an exemption. Request a copy of the **property report** and take the time to study it carefully and thoroughly. If you still have unanswered questions, delay any commitment until you have investigated. Discuss current prices in the area with local independent brokers. Talk to other people who have purchased lots. A local Chamber of Commerce, Better Business Bureau, or consumer protection group may have information about the seller's reputation. Inquire through county or municipal authorities about local ordinances or regulations affecting property similar to that which you plan to buy. **Don't be high-pressured by sales agents.**

## **KNOW THE FACTS ABOUT THE LOT**

Once you have decided on an appealing subdivision, inspect the property. Don't buy "site unseen." Check the developer's plans for the project and know what you are getting with your lot purchase. It's a good idea to make a list of the facts you will need to know. Some of the questions you should be asking, and answering, are these:

How large will the development become? What zoning controls are specified?

What amenities are promised -- club house, swimming pool, or fishing lake? Are there extra charges for using these facilities?

What provision has the developer made to assure construction and maintenance? Has the developer set aside money in a special (escrow) account and committed the funds to pay for these extra items?

*Know the facts ... don't  
buy "site unseen."*

What are the provisions for sewer and water service? For garbage and trash collection?

Are all of the promised facilities and utilities in the contract?

If funds are placed in a special account earmarked for a sewage treatment plant or other facility, how soon will the administering authority be formed? Who will be members of the authority? When will construction start and when will the facility be in operation?

Will there be access roads or streets to your property and how will they be surfaced? Who maintains them? How much will they cost?

Will you have clear title to the property? What liens, reservations, or encumbrances exist?

Will you receive a deed upon purchase or a recordable sales contract?

What happens to your payments? Are they placed in a special escrow account to pay for the property or are they spent at once by the developer?

If the developer defaults on the mortgage or goes bankrupt, could you lose your lot and investment to date to satisfy a claim against the development?

What happens when the developer moves out? Is there a homeowners' association to take over community management? If so, what is expected of you as a member?

Waterfront lots on artificial lakes present special potential problems. Is the lake completed? How many lot-buying families will use it? Who maintains the dam and pays insurance on it? How is the lake kept free of sewage and other pollution?

Are there restrictions against using the lot for a campsite until you are ready to build?

Are there any annual maintenance fees or special assessments required of property owners? Do those fees commence immediately, even though you will not build on your lot or use it for years?

This is a partial list of points to consider before you commit your money or your signature. No doubt you will add others to the list.

## **KNOW WHAT YOU ARE DOING**

Interstate land sales promotions often are conducted in a high-pressure atmosphere that sweeps unsophisticated buyers along. Before they are aware that they have made a commitment, these buyers may have signed a sales contract and started to make payments on a lot. They may be delighted with the selection made; but, if not, it may be too late for a change of mind.

## **NINE DISHONEST SALES PRACTICES**

Here are some of the practices avoided by reliable sales operations. Watch out for them and exercise sales resistance if you suspect they are occurring.

**1. Concealing or misrepresenting facts about current and resale value.** Sales agents may present general facts about the area's population growth, industrial or residential development, and real estate price levels as if they apply to your specific lot. You may be encouraged to believe that your piece of land represents an investment which will increase in value as regional development occurs. A sales agent may tell you that the developer will resell the lot if you request. This promise may not be kept. Future resale is difficult or impossible in many promotional developments because much of your purchase price --sometimes as much as 40 percent -- has gone for an intensive advertising campaign and commissions for sales agents. You are already paying a top price and it is unlikely that anyone else would pay you more than you are paying the developer. You may even have to sell for less than the price you paid for the lot originally.

*Sales promotions often are  
conducted in a high-pressure  
atmosphere.*

Furthermore, when you attempt to sell your lot, you are in competition with the developer, who probably holds extensive, unsold acreage in the same subdivision. In most areas real estate brokers find it impractical to undertake the sale of lots in subdivisions and will not accept such listings.

**The "Investment Pitch:"** It is unlikely that the lot you purchase through interstate land sales represents an investment in the view of professional land investors. Remember, the elements of value in a piece of land are its usefulness, the supply, the demand, and the buyer's ability to resell it.

The Urban Land Institute estimates that land must double in value every five years to justify holding it as an investment. In some areas the cost of holding the land, such as taxes and other assessments, can run as high as 11 percent a year.

**2. Failure to honor refund promises or agreements.** Some sales promotions conducted by mail or long distance telephone include the offer of a refund if the property has been misrepresented, or if the customer inspects the land within a certain period of time and decides not to buy. But when the customers request the refund, they may encounter arguments about the terms of the agreement. The company may even accuse its own agent of having made a money-back guarantee without the consent or knowledge of the developer. Sometimes the promised refund is made but only after a long delay.

**3. Misrepresentation of facts about the subdivision.** This is where the **property report** offers an added measure of protection. A sales agent may offer false or incomplete information relating to either a distant subdivision or one which you visit. Misrepresentations often relate to matters such as the legal title, claims against it, latent dangers such as swamps or cliffs, unusual physical features such as poor drainage, restrictions on use, or lack of necessary facilities and utilities. Read the **property report** carefully with an eye to omissions, generalizations, or unproved statements that may tend to mislead you. If you are concerned about overlooking something important, discuss the report and the contract with a lawyer who understands real estate matters.

The developer also may use advertisements that imply that certain facilities and amenities are currently available when they are not. Read the **property report** to determine whether these facilities and amenities are actually completed or proposed to be completed in the future. If the company advertises sales on credit terms, the Truth in Lending Act requires the sales contract to set forth fully all terms of financing. This information must include total cost, simple annual interest, and total finance charges.

**4. Failure to develop the subdivision as planned.** Many buyers rely upon the developer's contractual agreement or an oral promise to develop the subdivision in a certain way. The promised attractions that influenced your purchase--golf course, marina, swimming pool--may never materialize after you become an owner. If they are provided, it may be only after a long delay. If you are planning on immediate vacation use of the property or are working toward a specific retirement date, you may find that promised special features of the development are not available when you need them.

**5. Failure to deliver deeds, title insurance policies.** Documents relating to the sales transaction may not be delivered as promised. Some sales in the promotional land development industry are made by contract for a deed to be delivered when the purchaser makes the last payment under the terms of the contract. A dishonest developer may fail to deliver the deed or deliver it only after a long delay.

*A sales agent may offer false  
or incomplete information.*

**6. Abusive treatment and high-pressure sales tactics.** Some sales agents drive prospective customers around a subdivision in automobiles equipped with citizen band radios which provide a running commentary on lot sales in progress. The customer may be misled by this and other sales techniques to believe that desirable lots are selling rapidly and that a hurried choice must be made.

Hurrying the buyers into a purchase they may later regret is only one ploy of high-pressure sales agents. More offensive is abusive language used to embarrass customers who delay an immediate decision to buy. In some instances hesitant buyers have been isolated in remote or unfamiliar places where transportation is controlled by the sales agent or the agent's organization.

**7. Failure to make good on sales inducements.** Free vacations, gifts, savings bonds, trading stamps, and other promised inducements are used to lure people to sales presentations or to development sites. These promised treats may never materialize. Sometimes special conditions are attached to the lure or a customer is advised that gifts go only to lot purchasers. A "free vacation" may be the means of delivering the prospective buyer to a battery of high-pressure sales agents in a distant place.

*The promised attractions ...  
may never materialize.*

**8. "Bait and switch" tactics.** Lots are frequently advertised at extremely low prices. When prospective buyers appear, they are told that the low-priced lots are all sold and then are pressured to buy one that is much more expensive. If the cheaper lot is available, it may be located on the side of a cliff or in another inaccessible location. If accessible, it may be much too small for a building lot or have other undesirable features.

The buyers may be lured to the property with a certificate entitling them to a "free" lot. Often the certificate bears a face value of \$500 to \$1,000. If the buyers attempt to cash it in, the amount is simply included in the regular price (often inflated) of the lot they choose.

Often this so-called "bait and switch" technique has a delayed fuse. Buyers who purchase an unseen lot for later retirement may be unpleasantly surprised when they visit the development. The lot they have paid for may be remote from other homes, shopping, and medical facilities. It may be insufficiently developed for use. When the buyers complain, sales personnel attempt to switch them to a more expensive lot, applying the money paid for the original lot to an inflated price for the new one and tacking on additional financing charges. If the unhappy purchasers lack sufficient funds to accept this alternative, they are left with an unusable, unmarketable first choice.

*Some sales agents provide a running commentary on lot sales in progress.*

- 9. Failure to grant rights under the Interstate Land Sales Full Disclosure Act.** Purchasers may not be given copies of the **property report** before they sign a sales contract. Some sales agents withhold this detailed statement until customers choose a specific lot. Sometimes the buyers receive the report in a mass of promotional materials and legal documents. Unaware that the report is in their possession, they fail to read and understand it before signing a sales contract.

### **WHERE TO COMPLAIN**

If you believe you have been cheated in a transaction covered by the Interstate Land Sales Full Disclosure Act, write to HUD, Interstate Land Sales Division, 451 Seventh St. S.W., Washington, D.C. 20410. Set forth specific details of your complaint and include the name of the developer, name and location of the subdivision, and copies of the contract or any other documents you signed. It is important to act quickly because there are specific time limits for exercising your legal rights.

*"I've been cheated"*